IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
October 14, 2009 Session

# MBNA AMERICA BANK, N.A. v. DEBORAH L. AKERS

**Appeal from the Circuit Court for Davidson County**
**No. 08C1673 Amanda McClendon, Judge**

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**No. M2009-00821-COA-R3-CV - Filed January 19, 2010**

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This is an appeal from a suit filed pursuant to the Uniform Arbitration Act, Tenn. Code Ann. § 29-5-101, *et seq*., to enforce an arbitration award for credit card debt. MBNA sought enforcement of a $19,057.97 arbitration award in the General Sessions Court for Davidson County. The general sessions court awarded judgment to MBNA; the defendant appealed to the Circuit Court for Davidson County. The circuit court confirmed the award to MBNA. Defendant appeals. We affirm the circuit court finding that the defendant failed to file an application to vacate the arbitration award within the ninety days following receipt of the notice of the award as required under Tenn. Code Ann. § 29-5-313(b).

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed**

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which ANDY D. BENNETT and RICHARD H. DINKINS, JJ., joined.

Deborah L. Akers, Nashville, Tennessee, Pro se.

R. W. Shick, Jr., Nashville, Tennessee, for the appellee, MBNA America Bank, N.A.

## OPINION

MBNA America Bank, N.A., brought this action pursuant to the Uniform Arbitration Act, Tenn. Code Ann. § 29-5-301, *et seq.*, to enforce an arbitration award against the defendant, Deborah Akers.

The record shows that in April 2000, Ms. Akers received an unsolicited credit card from AAA Financial Services.[1] From April 2000 to June 2001, Ms. Akers used the credit card and incurred a substantial balance. At some point not indicated in the record, Ms. Akers' account was acquired by MBNA America Bank (hereinafter "MBNA").

Due to unfortunate circumstances, Ms. Akers became unable to continue making payments on her account. On September 2, 2005, Ms. Akers wrote a letter to MBNA advising that she was unable to make payments. On September 7, 2005, MBNA sent a letter to Ms. Akers advising that as a consequence of her notification, her account would be submitted to arbitration. Ms. Akers received MBNA's letter on September 16, 2005, and responded by sending a second letter, again stating that she was unable to make payments on her credit card account.

On October 10, 2005, Ms. Akers received a letter from a law firm representing MBNA, stating she owed a balance of $15,098.76. Accompanying the letter was a notice, which set forth procedures to dispute the debt owed. The record indicates that Ms. Akers took no action in response to the letter or the notice of available procedures.

Subsequently, on June 22, 2006, Ms. Akers received a Notice of Arbitration, along with a copy of the Credit Card Agreement "Additional Terms and Conditions," which set forth the arbitration provision. The Notice of Arbitration stated that Ms. Akers had thirty days to respond.[2] Ms. Akers responded by letter to MBNA's attorney dated July 7, 2006, stating that she acknowledged receipt of the Notice of Arbitration, that she did not consider herself bound by the arbitration provision and, therefore, she would not participate in the arbitration process. MBNA, however, elected to proceed to arbitration.

The claim against Ms. Akers was arbitrated before the National Arbitration Forum. An arbitration award was entered in favor of MBNA on October 2006 in the amount of $19,057.97. On December 18, 2006, Ms. Akers received a letter from a Tennessee attorney advising that he had been retained by MBNA to collect the arbitration award. The letter outlined the amount owed, set forth methods for payment of the debt, and provided that Ms. Akers had thirty days to respond if she disputed the validity of the debt. Ms. Akers responded

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[1]Ms. Akers was a AAA member at the time she received the credit card. Although the credit card was unsolicited, she used it with regularity during the following months and made monthly payments on the account.

[2]The options for a response, which were stated in the letter to Ms. Akers, included submitting a written response, which was to be served on the claimant and filed with the National Arbitration Forum, selecting a document hearing or a participatory hearing, or seeking the advice of legal counsel on how to proceed.

with a letter dated December 28, 2006, stating that she disputed the debt, and that she did not believe she was bound by any judgment awarded in arbitration.

It appears no further action was taken until January 8, 2008, when MBNA filed a civil warrant against Ms. Akers in the General Sessions Court for Davidson County seeking to enforce the arbitration award pursuant to the Uniform Arbitration Act, Tenn. Code Ann. § 29-5-101, *et seq*. A hearing was held on May 14, 2008, after which the general sessions court awarded a judgment to MBNA in the amount of $19,057.97. Ms. Akers appealed that judgment to the circuit court.

Following a hearing on February 11, 2009, the circuit court awarded judgment in favor of MBNA. In its order, entered March 13, 2009, the circuit court found that Ms. Akers' argument that the National Arbitration Forum was biased, lacked merit and that Ms. Akers had failed to file an application to vacate the arbitration award within ninety days following the receipt of the notice of the award, as required by the Uniform Arbitration Act. Ms. Akers then filed a timely appeal to this court.

## ANALYSIS

Pursuant to the Uniform Arbitration Act, Tenn. Code Ann. § 29-5-301, *et seq*., upon application of a party to the arbitration, "the court shall confirm an award, unless, within the time limits hereinafter imposed, grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in §§ 29-5-313 and 29-5-314." Tenn. Code Ann. § 29-5-313. Conversely, the statutory scheme provides that an award may be vacated by the court if it is shown:

> (1) The award was procured by corruption, fraud or other undue means;
> (2) There was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;
> (3) The arbitrators exceeded their powers;
> (4) The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of § 29-5-306, as to prejudice substantially the rights of a party; or
> (5) There was no arbitration agreement and the issue was not adversely determined in proceedings under § 29-5-303 and the party did not participate in the arbitration hearing without raising the objection. . . .

Tenn. Code Ann. § 29-5-313(a)(1)-(5).

Notably, however, the statute also provides that:

> (b) An application under this section shall be made within ninety (90) days after delivery of a copy of the award to the applicant, *except that, if predicated upon corruption, fraud or other undue means*, it shall be made within ninety (90) days after such grounds are known or should have been known.

Tenn. Code Ann. § 29-5-313(b) (emphasis added). The statutory scheme goes on to provided in a later section that "[e]xcept as otherwise provided, an application to the court under this part shall be by motion and shall be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions." Tenn. Code Ann. § 29-5-317.

The arbitration award against Ms. Akers was entered on October 24, 2006. A copy of this award was sent to Ms. Akers, who acknowledged her receipt of the award in her December 28, 2006 letter to MBNA's legal counsel. However, Ms. Akers made no application to vacate the award. Therefore, Ms. Akers' claim that the award should be set aside based upon the grounds set forth at Tenn. Code Ann. § 29-5-313(a)(2)-(5) is time barred unless she can establish that the award was predicated on corruption, fraud or other undue means.[3]

As her assertion that the award was "predicated upon corruption, fraud or other undue means," the court found no basis for such claim and the record before us fails to support such a claim. All the record provides is Ms. Akers' conclusory statement that the award was the result of corruption or fraud but she provides no facts to support such conclusory statements.

As Ms. Akers failed to file a timely motion to vacate the arbitration award as mandated by the statute, the circuit court was correct to confirm the arbitration award.[4] *See* Tenn. Code Ann. § § 29-5-312, 29-5-313(d) ("If the application is denied and no motion to modify or correct the award is pending, the court shall confirm the award."); *see also Millsaps v. Robertson-Vaughn Constr. Co.*, 970 S.W.2d 477, 480 (Tenn. Ct. App. 1997) (holding that the court may not refuse to enforce the award on the grounds that it was erroneous or went too far, if the motion was not filed in a timely manner); *NHC Healthcare, Inc. v. Fisher*, No. M2007-02459-COA-R3-CV, 2008 WL 5424012, at *4 (Tenn. Ct. App.

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[3] Ms. Akers contended that the National Arbitration Forum was biased, based upon a Wikipedia.com article indicating that the National Arbitration Forum and MBNA were founded by the same individuals.

[4] Ms. Akers also contended that the arbitration violated her constitutional rights as guaranteed by the Seventh and Fourteenth Amendments, and that the case should be dismissed on the grounds of improper venue. We find no merit to these contentions.

Dec. 30, 2008) (holding the plain language of the Uniform Arbitration Act "is directive and mandatory, requiring the trial court to confirm an arbitration award unless it is challenged within the statutory ninety-day period").

## IN CONCLUSION

The judgment of the trial court is affirmed, and this matter is remanded with costs of appeal assessed against Deborah L. Akers.

FRANK G. CLEMENT, JR., JUDGE